

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

DHL EXPRESS (USA), INC. d/b/a
DHL EXPRESS and AIRBORNE
EXPRESS, INC. d/b/a DHL EXPRESS,

Employer-Petitioner

and

Case 20-UC-411

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS; NATIONAL FREIGHT
INDUSTRY NEGOTIATING COMMITTEE;
TEAMSTERS WESTERN MASTER FREIGHT
DIVISION; JOINT COUNCIL NO. 7; AUTO
TRUCK DRIVERS LOCAL 85, IBT; AND
FREIGHT CHECKERS, CLERICAL EMPLOYEES
and HELPERS UNION LOCAL 856, IBT

Unions

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that DHL Express USA Inc., d/b/a DHL Express (DHL or the Employer), a corporation with facilities and/or operations located throughout the United States, including at San Francisco, California, is engaged in the business of handling and delivering parcels. The parties further stipulated, and I find, that during the 12-month period ending August 10, 2004, DHL sold services valued in excess of \$50,000 directly to customers located outside the State of California. Based on the parties' stipulation to such facts, I find that DHL is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

4. On August 15, 2003, DHL, a non-union airfreight company purchased and acquired Airborne Express, Inc. (Airborne), a nationwide airfreight company which had collective-bargaining agreements with the International Brotherhood of Teamsters (the International) and affiliated Teamster entities across the country (collectively herein referred to as the Teamsters). Thereafter, in the process of integrating the two companies, DHL entered into a Change of Operations Agreement (COA) with the Teamsters, whereunder it proposed to merge DHL service center operations into the corresponding Airborne pickup and delivery terminals where Airborne was covered

under the Teamsters National Freight Agreement. (the NMFA) and other applicable Teamsters collective-bargaining agreements.¹

By the instant petition, DHL seeks to clarify the units² of the merged employees, in the San Francisco Bay Area to exclude employees who work at its San Francisco Airport Gateway facility (SFO Gateway) at the San Francisco International Airport (SFO). The units of merged employees consist of approximately 2,500 employees in the Bay Area who work at 12 service centers in the Bay Area,³ and the Oakland and San Jose International Airports, and who are represented by Teamsters Locals 85 and 856 and Joint Council 7 (the Unions). There are approximately 160 SFO Gateway employees that the Employer seeks to exclude from these units.

The Unions assert that the petition should be dismissed and the matter resolved under the grievance/arbitration provisions of the NMFA, because under the terms of the COA, the parties agreed that the Change of Operations Committee established by the NMFA under Article 6, would make decisions regarding the transfer of operations and the seniority of employees affected by such transfers, and would retain jurisdiction to resolve disputes arising under the COA until April 1, 2006. In effect, the Unions argue

¹ These agreements include the NMFA, area production and delivery and clerical supplements and local union riders and national and area grievance committee decisions identified in a letter of understanding between Airborne and the various Teamster entities, which had collective bargaining contracts, which covered Airborne included in the DHL merger with Airborne.

² I refer to “units” rather than “unit” in the singular, as the Employer does in its brief, because there appear to potentially be several different units of DHL service center and Oakland and San Jose Airport ramp operations employees who are covered under the NMFA and applicable local Teamster agreements. These units would potentially include separate units of clerical employees and drivers, as well as the units represented by the various Teamsters locals that are party to the COA.

³ The record does not disclose the street addresses of the covered facilities. However, the record reflects that these facilities are located in Redwood City, South San Francisco, San Francisco, Burlingame, Dublin, Fremont, South San Jose, Corte Madera, Santa Clara, Petaluma and Monterey, California.

that the Employer solicited the Teamsters to make a bargain with regard the merger of DHL's non-union workforce with Airborne's unionized workforce; that the parties thereafter made their bargain, which included a designated means of resolving disputes set forth in their agreement; and that DHL should be held to that bargain. Because the Change of Operations Committee is a creature of the NMFA, the Unions argue that the appropriate course is to allow the grievance/arbitration process to resolve the matter, or in the alternative, to await its determination as to whether the COA was intended to apply to the SFO Gateway operation.

After carefully considering the record evidence, the position statements of the parties, and applicable case law, I find, for the reasons discussed below, that the units of employees at the facilities covered by the Unions' agreements in the San Francisco Bay Area should be clarified to exclude the employees working in DHL's SFO Gateway operation.

Facts: The Pre-August 2003 Operations of Airborne and DHL. Prior to August 2003, Airborne and DHL were separate corporations, which were both involved in the transportation of domestic and international cargo. Airborne primarily handled domestic cargo and DHL primarily handled international cargo. To the extent their markets overlapped, Airborne and DHL were competitors and neither handled each other's cargo.

In the San Francisco Bay Area, Airborne operated 12 service centers at separate locations and ramp/airport operations at Oakland International Airport and at San Jose International Airport. Of these 12 service centers, the Oyster Point service center in

South San Francisco was the closest to DHL's SFO Gateway facility, located about two miles away.

The function of the Airborne service centers was to pick up customer cargo; sort it into "C" type⁴ containers; deliver it to the Oakland or San Jose Airports; retrieve cargo in C type containers from these airports, bring it back to the service centers; and sort the containers by route for delivery for Airborne's customers; and to deliver it to Airborne's customers. The Oakland Airport operation was part of an Airborne service center. The type of aircraft used by Airborne out of the Oakland and San Jose Airports was ABX aircraft.⁵ The Airborne operation had no customs brokerage operation. All of Airborne's rank and file employees in the San Francisco Bay Area were represented by the International, and by Teamster Joint Councils, including Joint Council 7, and various Teamster local unions affiliated with the International, including Teamsters Local 85 and 856.⁶ Local 85 represented Airborne's production and delivery employees, and Local 856 represented Airborne's clerical employees. The record contains a copy of the NMFA effective for the period April 1, 1998 through March 31, 2003, the NMFA effective for

⁴ Type "C" containers are about 48 to 52 inches high and about three feet wide and look like a large suitcase on wheels. They are able to fit through the passenger door of ABX aircraft, the carrier used by Airborne to transport cargo from Oakland and San Jose Airports.

⁵ ABX is a domestic carrier that Airborne contracted with to transport its cargo through Oakland and San Jose Airports. ABX transports cargo only in C type containers

⁶ Specifically, Teamsters Local Union 70 represented production and delivery employees at the Dublin, Fremont and Oakland service centers; Local 287 represented production and delivery employees at the South San Jose and Santa Clara service centers; Local 624 represented production and delivery employees at the Petaluma and Corte Madera centers; and Local 912 represented production and delivery employees at the Monterey, California, service center.

the period April 1, 2003, through March 31, 2008, and other applicable agreements, which currently cover these production and delivery and clerical employees.

DHL's Operations Prior to April 2003. Prior to August 2003, none of the employees employed at DHL's facilities in the San Francisco Bay Area or anywhere else in the United States were represented by the Teamsters or by any other union. DHL operated seven service centers in the San Francisco Bay Area,⁷ and the Gateway operation at SFO. The function of the DHL service centers was to pick up and deliver cargo for DHL customers. The DHL service centers were responsible for picking up cargo, sorting it; placing it into air containers; and transporting it to the SFO Gateway operation. The function of the SFO Gateway operation was to retrieve cargo from international and domestic airlines, ASTAR Aircraft⁸ and other chartered aircraft; sort the cargo for delivery to DHL service centers and other domestic and international locations; and transport cargo to DHL service centers or to various airlines. The SFO Gateway operation received cargo from DHL's service centers and from international airlines; sorted the cargo; and loaded it onto DHL chartered aircraft, ASTAR chartered aircraft and/or international or domestic carriers. The SFO Gateway operation also handled the paperwork associated with the export and import of shipments of cargo and

⁷ The DHL service centers in operation prior to the merger were located in Burlingame, San Francisco, South San Francisco, San Rafael, Sunnyvale, San Leandro and Concord. The street addresses of these service centers are not included in the record.

⁸ ASTAR is a separately-owned cargo airline, with whom DHL contracts to provide international air transportation services for DHL's five Gateway operations in the United States, including the Gateway at SFO. ASTAR does not provide services to Airborne. Rather, as noted above, Airborne contracts with ABX for air transportation services. ASTAR transports cargo in its aircraft only in "A" type containers while ABX transports cargo in its aircraft only in "C" type containers because the doors on ABX aircraft are too small for "A" type containers. Aircraft are not loaded or unloaded at any service center.

the cargo's compliance with applicable regulations. In addition to the foregoing, the SFO Gateway operation acted as an international customs broker.⁹

The Agreement to Merge DHL and Airborne Operations. As indicated above, in July 2003, Airborne and the Teamsters entered into a five-year Agreement incorporating the NMFA and other applicable Teamster agreements, for a number of Airborne facilities located across the United States, including all of Airborne's facilities in the San Francisco Bay Area. In August 2003, DHL Holdings (USA), Inc. purchased Airborne, and Airborne became a wholly-owned subsidiary of DHL Holdings (USA) Inc., and a sister company of DHL.

The record includes a letter from DHL Vice President of Labor Relations William Boe dated February 26, 2004, addressed to International President James Hoffa, the International's National Director of Freight, and the Timothy Lynch, President and CEO of the Motor Freight Carriers Association. In his letter, Boe stated that DHL had acquired Airborne on August 15, 2003, and that, as the recipients of the letter knew from preliminary meetings between DHL representatives and representatives of the National Freight Industry Negotiating Committee, DHL "proposed to combine certain DHL service center locations with existing Airborne locations covered by the National Master Freight Agreement, pursuant to the approval of a Change of Operations Committee."¹⁰ Attached to Boe's letter was DHL's proposal for a "Multi-Region Change of

⁹ As described in the record, a customs broker is an entity licensed by the United States Government to perform the clearance of import shipments into the United States.

¹⁰ The Change of Operations Committee was established under Article 8, Section 6 of the NMFA, and is designed to determine, in part, the seniority of employees affected by a transfer, change or modification of employees covered by the NMFA.

Operations,” “involving the Eastern, Central, Southern and Western Regions.” The letter further stated that DHL requested that the Change of Operations Committee convene a hearing on April 1, 2004, and that DHL would send a copy of the letter and its proposal to all affected local unions and would arrange to meet with each local union to discuss the effects of the change upon each union’s members. The letter closed by stating that “Prompt approval of this change will help to ensure the job security of current Airborne and future DHL members.” Included with Boe’s letter was the cover-page of a document titled “Multi-Region Change of Operations Involving the Merger of: Airborne Express and DHL Express.” Attached to this title page was a document titled “Introduction,” which states, in relevant part, as follows:

After DHL purchased Airborne, it began the complex process of integrating the two companies. One of the critical steps in this process is to merge DHL service center operations into the corresponding Airborne pickup and delivery terminals. This process has been completed at several major white paper contract locations. Thus, the purpose of this Change of Operations is to effectuate the merger of those operations, at the locations where Airborne is covered under the National Master Freight Agreement. It is important to note that this case differs from the normal Change of Operations proceeding because here, the acquiring company, DHL, is non-union.

We have asked that this Change of Operations be heard on an expedited basis, on April 1, 2004, because time is of the essence. Whenever one company purchases another company in the same industry, a state of uncertainty inevitably arises. During this period of uncertainty, competitors are likely to pursue predatory practices, in an effort to disrupt the integration, and steal market share from the combining companies. In this case, that threat is both real and ongoing. Therefore, the sooner we can complete this change of operations, and integrate our NMFA locations, as well as our remaining white paper contract locations, the better for business, the union, and the employees. Indeed, our collective future depends on it.

DHL's Change of Operations proposal (the Proposal) also included a list of the local unions that were party to the change, including Teamsters Locals 85 and 856. With respect to Local 85, the Proposal offered to determine the seniority rights of the respective workforces in accordance with a "follow the work," principle, and proposed a dovetailing of employees from the DHL facilities that were closing into the workforce of the various Airborne facilities that would continue to operate in the Bay Area. The Proposal included DHL's estimate of the number of employees that would be added to each operation covered under the NMFA as a result of the merger. The Proposal stated that this number, "represents the volume of service work which was performed by DHL employees at service centers within the footprint of that NMFA station prior to the merger, as listed in the proposal." The Proposal also discussed DHL's offer to conduct a preliminary integration bid to permit DHL employees to follow their work to the corresponding NMFA locations.

Item 3 of the Proposal requested that the Change of Operations Committee retain jurisdiction for a period of sixty days following implementation to effectuate the follow the work principle, after which time DHL would submit an amended document, which would reflect the actual number of positions created at each NMFA location as a result of the merger. The Proposal requested the Change of Operations Committee to then adjust the number of DHL employees to be dovetailed into the applicable seniority list in order to conform to the actual number of additional jobs that had been created in the operation. The Proposal stated that the Committee "shall also determine the seniority rights of the remaining DHL employees, based on the "follow-the-work" principle. The Proposal

further included the statement that DHL would conduct a final integration bid among employees in the combined workforce and set forth the transitional rights of DHL employees regarding such matters as severance pay, wage rates, seniority, vacation, sick days, waiver of union initiation fees, health and welfare, pension and driver's license requirements. This section included the statement that the DHL employees moved onto the Airborne/DHL payroll would "be governed by the terms and conditions of the collective-bargaining agreement," and agreed that on the date of integration, DHL would commence making payments to the applicable Teamster health and welfare and pension funds.

Also attached to the Proposal was a listing of "Additional Jobs Created by Integration," which included the NMFA locations and the "DHL Match," identified by city and Teamster local, for the entire United States, with an additional number of "NMFA positions," to be added at each NMFA location. The Western Region listing for this proposal includes locations for Locals 85 and 856 and their DHL matches and the number of additional NMFA positions created by the merger.¹¹

Finally, attached to the Proposal was a roster of "DHL Employees," identified as "Local 85," employees, which lists employees by name and city of facility. This roster

¹¹ Specifically, the listing for Local 85 is "So. San Francisco (OYS)" and the DHL match is Burlingame (SSF); Redwood City (RWC) and DHL match, Burlingame (SSF); San Francisco DT (SFF) and DHL match, San Francisco (JCC). For Local 856, the listing includes Dublin (CCC) and DHL match Concord (CCR); Fremont (FMT) and DHL match San Leandro (OLD); Monterey (MRY) and DHL match Sunnyvale (MRY)?; Oakland (OAK) and DHL match San Leandro (OLD); So. San Francisco (OYS) and DHL match Burlingame (SSF); Petaluma (PET) and DHL match San Rafael (JSG); Redwood City (RWC) and DHL match Burlingame (SSF); Corte Madera (STS and DHL match San Rafael (JSG); San Francisco DT ((SFF) and DHL match San Francisco (JCC), South San Jose (SJA) and DHL match Sunnyvale (SJC) and Santa Clara (SNV) and DHL match Sunnyvale (SJC). The record does not disclose street addresses for any of these facilities.

included employees working in San Francisco, South San Francisco at Oyster Point, and Burlingame. Also attached to the Proposal is a listing of “AFC¹² Employees,” for Local 85, which included employees at Oyster Point, Redwood City, and a location called “SFF/SFO.”¹³

The record contains an undated document titled “Decision In Case MR-CO-4-1/2004 Airborne Express/DHL Express,” which recites that it is a motion to the Chairman of the Committee to have DHL’s Proposal be approved as modified therein. Among the relevant modifications contained in this document is an implementation date of April 19, 2004. Item 10 of this document states:

The Company will make its best efforts to obtain all *bargaining unit work performed by DHL employees at a DHL facility which is merged into an Airborne facility* [emphasis supplied] and transfer such work to an Airborne location, including the staging of aircraft and the loading and unloading of aircraft by DHL employees. All pick-up and delivery work performed by DHL employees or independent contractors of the type currently performed by Airborne bargaining unit employees within the preexisting Airborne footprint shall be performed by bargaining unit employees when the operations are merged.

Article 24 of this document states:

The Change of Operations Committee will hold jurisdiction until April 1, 2006. All grievances related to this change of operations, except seniority date disputes, shall be filed with the Change of Operations Committee. There will be no delays or postponements to impede expedited resolution of the disputes.

¹² AFC apparently refers to Airborne Freight Company.

¹³ The record does not disclose the meaning of “SFF/SFO,” however, SFO is generally used to designate San Francisco International Airport.

Article 26 of this document states:

This decision is based on the authority of the Change of Operations Committee under Article 8, Section 6(g) to apply a seniority application based on the factual circumstances of the DHL and Airborne merger.

The parties do not appear to dispute that the foregoing documents constituted the COA, effective April 1, 2004.

Closure of DHL Service Centers in the Bay Area. In April 2004, DHL closed its seven San Francisco Bay Area service centers and began using the twelve Airborne service centers described above. All of the former Airborne employees who worked at these service centers and at Airborne's ramp operations at Oakland and San Jose Airports were treated by DHL as covered by the NMFA and other applicable Teamsters collective-bargaining agreements. The DHL employees from the seven closed facilities were dovetailed into the Airborne facilities and also treated as covered by the Teamsters agreements.

The twelve Airborne centers have continued to operate but now do so under the name DHL d/b/a DHL Express (DHL). Employees at the service centers now handle both Airborne and DHL cargo, depending on the customer's preference.

DHL did not, however, close its SFO Gateway operation and did not treat employees working in that operation as covered under the NMFA or the other Teamster agreements. Instead, the SFO Gateway employees continued to perform the same work that they had performed before the merger.¹⁴

¹⁴ As discussed more fully below, the SFO Gateway also continued to subcontract certain work, such as line haul runs to DHL's Los Angeles Gateway, and line haul runs to Sacramento, Stockton, Fresno and

On March 23, 2004¹⁵, Local 85's Secretary-Treasurer Van Beane, wrote to DHL Labor Relations Manager Mel Nensel, requesting information pertaining to the loading and unloading of "DHL aircraft(s) landing and departing SFO," and stating that at a meeting involving Local unions held on March 15, Local 85 had raised this issue and notified those present that it intended to claim the loading and unloading of planes as "additional work for members of Local 85 since that work is being performed now by DHL employees." Van Beane's letter states that "the Company's response was that SFO aircraft work was not part of the change and therefore not open for discussion." The letter stated that DHL's response was "unacceptable," and requested certain information about such work, stating that Local 85 intended to raise the issue in front of the Change of Operations panel on April 1.

By letter dated April 19, Local 85 Business Agent, Lou Marini, notified DHL Labor Manager Nensel that, "as of April 19, 2004, Local 85 members were prepared to start work at the DHL Facility located at San Francisco International Airport in compliance with the Change of Operation decision in case MR-CO-03-04/2004."

Marini's letter further states:

By this letter we are putting DHL on notice that we will proceed with the grievance procedure to have DHL turn over the aircraft loading and unloading, the interlining of freight between commercial airlines, the stripping and sorting of inbound and outbound freight plus any and all

Seattle SFO Gateway did not use Teamster represented employees to handle such work. However, Teamster represented employees were assigned to the runs between a transfer yard located adjacent to the SFO Gateway and the twelve Bay Area service centers and the Oakland and San Jose Airport facilities. The record also shows that SFO Gateway continued to handle ramp services for cargo brought in and picked up by freight forwarders, which are separate companies from DHL that contract for space on ABX aircraft that are used by DHL at SFO Gateway.

¹⁵ All dates hereafter refer to calendar year 2004 unless otherwise indicated.

other work now being performed by the non-integrated DHL employees at SFO.

On April 19 and June 15, Local 85 filed grievances with the Change of Operations Committee, alleging that DHL had failed to comply with the COA. In the application for dispute hearing, which was also dated April 19, Local 85 asserted that:

On the date of implementation 4/19/2004 the Company refused to comply with the change of operations decision. Specifically Item 10 which directed “employees at a DHL facility transfer such work to an Airborne location including the staging of aircraft etc.

The application for dispute hearing states that at Step 1 of the grievance procedure, the Employer’s position was that the SFO Gateway operation was not included in the change and that the relief sought by the grievance was: “All work associated with San Francisco International Airport be Local 85 work as its own facility.”

The June 15, grievance by Local 85, alleges that DHL “is receiving and shipping freight to outside carriers directly from the Gateway operation.” The relief sought by the June 15 grievance was stated as: “Work to be transferred to bargaining unit as soon as possible.”

On May 27, Teamsters Local 856 also filed a grievance with the Change of Operations Committee, alleging that DHL had “failed to disclose clerical employees doing International work,” which was historically performed by Local 856. By its grievance, Local 856 sought that: “All clerical International employees for the Gateway to be awarded to Local 856.”

DHL filed the instant unit clarification petition on June 17.

By letter to the undersigned dated July 2, the attorney for Teamster Locals 85 and 856 stated that he assumed that the Employer had “. . . filed this petition in response to grievances filed by Locals 85 and 856 claiming the Employer’s San Francisco Gateway employees are covered by the NMFA by virtue of the Change of Operations Committee decision rendered April 1, 2004” and requested that the matter be postponed until the grievances of Locals 85 and 856 were heard at a Joint Labor Management hearing scheduled for July 14.

The record reflects that the Joint Labor Management Committee deadlocked on the grievances at the July 14 hearing.¹⁶

The SFO Gateway Operation. The SFO Gateway is located on the property of the San Francisco International Airport. DHL employs approximately 160 employees at the SFO Gateway. Generally, operations at the Gateway facility are divided among three departments: the export department, the import department and the operations department. However, there also several employees at this facility who do not work in these three departments. Employees must have a San Francisco International Airport badge to enter the SFO Gateway facility. Those employees who retrieve cargo from international flights must also have a U.S. Customs seal on their badge.

The Export Department at SFO Gateway. The export department at the SFO Gateway handles all of the paperwork and regulatory compliance work for shipments leaving the United States through SFO. The export department employs approximately

¹⁶ Under Article 8 of the NMFA, it appears that the grievances would next be considered by the National Grievance Committee, whose decision would be final and binding. If the National Grievance Committee deadlocks, it would move to the National Review Committee, and if that Committee deadlocks, to the National Dispute Resolution Panel.

15 employees who are immediately supervised by a.m. and p.m. export supervisors, who, in turn, report to a.m. or p.m. operations managers. The operations managers, in turn, report to SFO Gateway Manager Eugene Cozzoli, who reports to DHL's Senior Director of U.S. Gateways Scott Dobbs. Dobbs reports to the Senior Vice President of U.S. Gateways And Hubs, Steve White. White reports to DHL COO Fred Beljaars who reports to DHL CEO John Fellows.

The principal functions of the SFO Gateway export department include imaging paperwork, such as air bills, commercial invoices and other export paperwork; entering data from the images into DHL's export computer system (called Echo); compiling information by destination to create export manifests; and completing master airway bills for the airlines from the manifests. Export department employees are divided among the following classifications: international service agent-export 1; international service agent-export 2; international service agent-export 3; international service agent export-4; and senior data entry clerk. Export department employees are required to possess knowledge of export documentation and government regulatory requirements for all cargo and to be familiar with DHL destinations.

The Import Department at SFO Gateway. The import department at the SFO Gateway handles U.S. Customs clearance for all inbound DHL cargo into SFO, working with Customs to release such cargo. The import department has its own brokerage license and acts as an internal customs brokerage agent at SFO. Approximately 40 international service agents work in the SFO Gateway import department. There are also

import employees classified as levels 1 through 4 who handle imported cargo.¹⁷ Import department employees report to an a.m. or p.m. import supervisor who reports to the import manager. The import manager reports to SFO Gateway Manager Eugene Dobbs. The reporting structure above Dobbs is the same as that of the export department.

The function of import department employees is to examine electronic manifests for inbound cargo to determine whether formal or informal Customs entry regulations apply. If informal entry regulations apply, the level 1 agents classify the incoming cargo and determine the amount of the Customs duty owed for the shipment. The level 1 agents then electronically transmit the manifest to Customs which either provides a preliminary clearance or rejects the determination. If the level 1 agents' determinations are rejected, Customs' officials open and examine the shipment upon arrival at SFO and determine the tariff or request that the shipment be processed as a formal entry. If the shipment is cleared, the level 1 agents submit a clearance form to Customs.

For formal entries, the level 1 agents print images of the documents associated with the shipment and transfer the file to a Level 2, 3 or 4 agent. The import department uses the Customs Brokerage System ("CBS") to enter data and communicate with Customs. The processing of formal entries is much more time consuming than that for informal entries because there must be one entry for each air bill in a formal shipment

¹⁷ Level 1 agents deal with "informal entries" which pertain to cargo valued at \$2,000 or less; Level 2 agents deal with "formal entries," which pertain to cargo valued at greater than \$2,000, and to certain restricted commodities; Level 3 agents assist DHL's global account customers with clearance of their shipments. Level 4 agents (lead international service agents) perform all of the functions performed by Level 1 through 3 agents and serve as leadpersons within the import department.

whereas with informal shipments, all items contained in a shipment may be grouped together on a single air bill.

In addition to the import agents, the import department also has employees who perform customer service functions, such as telephoning customers to request information necessary to obtain entry clearance for a shipment. Other import department employees handle the payment of customs duties and maintain customer records.

SFO Gateway's Operations Department. The operations department is responsible for handling cargo at the SFO Gateway. Approximately 98 employees work in the operations department. They are classified as international service agents, operations agents 1, 2 or 4, and load planning agents. Their major job functions include retrieving cargo from international flights operated by scheduled airlines and airplanes chartered by DHL;¹⁸ sorting inbound cargo by destination and loading cargo into "C" containers or air containers;¹⁹ receiving and sorting international and domestic outbound

¹⁸ The retrieval of inbound cargo involves the retrieving cargo from chartered airlines, such as ASTAR, on the airport ramp, and from internationally scheduled flights at the international terminals at SFO. The ramp is a restricted area and the SFO Gateway employees must have badges to work on the ramp. To retrieve cargo from international commercial flights, employees must have a U.S. Customs seal on their badges. Employees use tugs and dollies for international flights and a K loader, belt loader, tugs and container dollies for chartered flights. Such equipment cannot be removed from the ramp.

¹⁹ The sorting of inbound cargo involves scanning the cargo using the DHL Impex system. For cargo retrieved from commercial carriers, employees scan the containers and each shipment within the container. For cargo received from ASTAR planes, the employees scan the containers and loose cargo. After scanning, the cargo is sorted into slides, with "splits" to the different Bay Area Service Center locations, destinations within the U.S., and international destinations. The cargo is then loaded into "C" or "A" type containers destined for the Bay Area service centers, West Coast flights and international destinations. The employees load the containers destined for locations outside the Bay Area onto contract air carriers or scheduled international flights. Containers destined for the Bay Area are taken to the "C" container or air container scissor lift at the Transfer Yard and pushed across the fence dividing the ramp from the transfer yard. At the fence, trucks from the service centers back up to the dock and service center drivers load the containers onto their trucks. No SFO Gateway employees perform work in the transfer yard and no service center employees perform work in the SFO Gateway facility.

shipments;²⁰ performing inventory control for import shipments pending clearance through Customs; loading and unloading ASTAR and other contract airlines; conveying cargo to domestic and internationally scheduled commercial flights;²¹ creating load plans for ASTAR aircraft;²² performing control room duties;²³ loading and unloading “filler freight;”²⁴ and loading and unloading line hauls to and from Los Angeles, Sacramento, Stockton, Fresno and Seattle.²⁵

²⁰ The SFO Gateway receives outbound cargo from the service centers. Service center drivers deliver “A” and “C” containers to the container dock in the transfer yard. They push the containers across the dock at the fence that separates the transfer yard from the ramp operation. From this point, SFO Gateway employees take the containers to a conveyor belt within the SFO Gateway warehouse and empty the contents onto the belt. SFO Gateway employees then sort the cargo, which has been divided into three splits at the service centers, into thirty-nine splits. After sorting the cargo, the employees scan it using an export scanner for foreign-bound cargo or a domestic scanner for domestic-bound cargo. They then place the cargo into air containers and take the containers to contract carriers or international air carriers at their respective locations on the ramp at SFO.

²¹ SFO Gateway employees also convey cargo to internationally scheduled commercial flights, using tugs to take the containers to the international terminal, where they leave the containers to be loaded onto planes by airline personnel.

²² There are three load planning agents whose job is to prepare load plans to ensure that the aircraft have balanced loads. These agents are specially trained and certified as required by FAA regulations, which are administered by ASTAR. No employees at the service centers prepare such load plans.

²³ The control room is the center of communications with the other gateways operated by the Employer, as well as other hubs and airlines. Eleven control room employees send and receive information between these different entities regarding the status of shipments and commercial flights, set commercial flight schedules and select commercial flights on which to transport cargo, and book cargo space on scheduled commercial airlines. No service center employees perform this type of work.

²⁴ Filler freight is cargo shipped on a DHL contract flight by an independent freight forwarding company (e.g., Eagle, BAX, Emery Air Freight, etc.) which has contracted to ship its freight on a DHL contract carrier. SFO Gateway employees load and unload such freight at the ramp and load and unload the containers into or out of the freight forwarding company’s truck. The record reflects that the SFO Gateway has been handling such freight for approximately three years.

²⁵ Line hauls refer to the transportation by truck between two terminals, two service centers, between a service center and the SFO Gateway or between two Gateways. It does not involve a pick up or delivery from a customer. There are three line haul routes going to or from the San Francisco Gateway, including the line hauls between the SFO Gateway and DHL LAX Gateway, which are handled by independent trucking companies; the line haul between the SFO Gateway and Bay Area Airborne Service Centers, which are handled by service center drivers represented by the Teamsters;

Operations department employees are supervised by various operations supervisors who report to Gateway Manager Cozzoli. Cozzoli in turn reports to Senior Director of U.S. Gateways Scott Dobbs, who reports to the Senior Vice President of Gateways and Hubs, who reports to the Employer's COO, who reports to its CEO.

Other Employee Classifications In the SFO Gateway Operation. There are employees in three other job classifications working at the SFO Gateway. These include one facilities maintenance employee who is a full-time janitor; three administrative assistants who perform secretarial work; and one customer service representative who acts as a receptionist and who handles accounts payable work.

Overview of Service Center Operations. As described above, in April 2004, DHL closed its seven Bay Area service centers, began operating out of the twelve Airborne service centers and the Oakland and San Jose Airport facilities, and applied the NMFA and other applicable Teamster agreements to the approximately 2500 employees working at those facilities. The twelve service centers and the Oakland and San Jose Airport facilities began now operate under the name DHL Express and handle both DHL and Airborne cargo, which is segregated at the service centers. Airborne cargo travels to and from the services centers to the Oakland and San Jose Airports; and DHL cargo goes to and from the service centers to the SFO Gateway operation. Cargo destined for the SFO Gateway operation is delivered by service center drivers to a transfer yard where it is loaded onto a conveyor belt and transported to the SFO Gateway employees.

and line hauls between the SFO Gateway and Sacramento, Stockton, Seattle and Fresno service centers, which are handled by independent trucking companies.

The function of the service centers is to gather cargo, freight or express shipments from “A” containers; and transport these containers to the Oakland and San Jose Airports or to the Gateway at SFO or to pick up cargo from these airports and take it to the service centers; sort the cargo by route; and take the cargo to customers.

Two classifications of employees work at the twelve service centers: drivers (also called couriers) and operations agents (also called clericals). As noted above, the drivers are represented by various Teamster locals and are covered by the NMFA and local supplemental agreements. As noted above, five Teamster locals represent DHL’s drivers in the San Francisco Bay Area. Teamsters Local 85 represents the drivers at the Oyster Point, Redwood City, and San Francisco service centers. Teamsters Local 856 represents the clerical employees at all of the twelve Bay Area service centers.

The Service Center Drivers. The drivers at all of the service centers are directly supervised by a field service supervisor, who reports to a cartage manager or service center manager, both of whom report to a district field services manager. The district field services manager reports to the regional field service director who reports to the senior vice president of operations, who reports to the Employer’s COO and CEO.

Service center drivers drive vans, tractor-trailers, bobtails, step vans and high cubes depending on the driver’s licensing. Drivers are paid based on the size of the truck they drive and according to rates set by the NMFA and its local supplements. Service center drivers are responsible for picking up cargo and associated paperwork from customers and delivering it to the service centers, where they sort it according to

domestic destinations.²⁶ After the cargo is sorted, the drivers load it into containers and transport the containers to the airports. In reverse, the drivers pick up containers from the airports; transport it to the service centers; unload the cargo; sort it by customer delivery route; and deliver the shipments to customers. Not all of the service center drivers deliver or pick up from the airports, but otherwise they all perform all of the functions described above.

Clerical Employees. Two classifications of clerical employees work at the service centers: service agents and payroll clerks. Typically, between two and eight clerical employees work at each service center. The clerical employees are supervised by a field services supervisor and their reporting structure is the same as that of the drivers in the service center where they work.

The functions of the service agents include receiving paperwork from the drivers or from customers that come to the service center to pick up or drop off packages; coordinating shipping paperwork for outbound shipments; occasionally performing data entry for DHL international non-duty shipments and Airborne International Express; tracking and tracing shipments; resolving shipment problems; and answering the telephones. The functions of the payroll clerks include processing payroll and vacations; resolving payroll issues; administering prepaid vacations; and distributing paychecks.

Oakland Ramp Operations. The Oakland Airport is located about 31 miles from SFO. The Employer's operations at the Oakland Airport operation include both a service center and a ramp operation. In the ramp operation, for incoming cargo, employees

²⁶ Airborne cargo is sorted for two destinations, Wilmington and Fresno. Drivers do not sort cargo for foreign destinations.

unload containers from ABX aircraft; place them onto a C container dock; and load them into service center trucks. For outgoing cargo, employees bring loaded containers to the dock; put them onto a conveyor belt; and load them onto airplanes. The Oakland Airport operation does not retrieve freight from international flights and does not deliver freight to international carriers. It does not handle import or export paperwork and is not a licensed customs broker. The service center portion of the Oakland Airport operation involves drivers who pick up cargo from the Airport and take it to customers or to service centers to be sorted and delivered to customers; in the reverse, the drivers pick up cargo from customers or drop boxes and deliver it to the Airport to be loaded onto planes for shipment. The Oakland ramp operation does not handle international cargo like the SFO Gateway operation, and all inbound freight is local. No clerical employees work in the Oakland Airport ramp operation.

The Oakland ramp employees are supervised by a field service supervisor (ramp supervisor) and thereafter the reporting structure is the same as that of the service centers. Employees working in the Oakland Airport operation and the SFO Gateway operation have separate immediate supervision.

The San Jose Ramp Operation. The San Jose Airport is located about 33 miles from SFO. The Employer's operation at the San Jose Airport consists of a ramp operation only. It has no service center connected to it. Work performed at this location is similar to that performed at the Oakland Airport ramp and is limited to domestic freight. It does not handle cargo from commercial carriers and does not perform customs brokerage work or import or export cargo like the SFO Gateway operation.

The San Jose Airport ramp employees are supervised by a field service supervisor (ramp supervisor), who reports to a district field service supervisor. The managerial reporting structure is similar to that at the Oakland Airport operation. No San Jose Airport facility supervisors supervise SFO Gateway employees or vice versa.

No clerical employees are employed in the San Jose ramp operation.

The Oyster Point Service Center. The service center closest to the SFO Gateway is located about two miles away at Oyster Point. The Oyster Point service center is adjacent to but not located on SFO property like the SFO Gateway facility. The Oyster Point service center includes an area for parking vans and trucks and to unload cargo next to conveyor systems. The facility also includes an operations-management/sales office, break room and restrooms.

The Transfer Yard. Prior to the integration of the Bay Area DHL and Airborne in 2004, certain drivers from DHL's service centers had ramp badges that enabled them to enter the ramp area at the SFO Gateway to pick up and deliver cargo. At or about the time it merged its Bay Area service centers with those of Airborne, DHL constructed a transfer yard adjacent to the SFO Gateway facility and since then, has required that all deliveries of cargo to and from the service centers and the SFO Gateway be transferred within the transfer yard.²⁷ A yellow line, a fence and a gate separates the transfer yard from the SFO Gateway ramp operations. Drivers from the service centers are required to

²⁷ SFO Gateway Manager Cozzoli testified that prior to the integration of the two companies, DHL had more traffic in the ramp area than any other facility at SFO with about sixty vehicles on the ramp everyday. Before the integration of operations, there were only specific drivers who came to SFO, and they drove bobtails, vans and container trucks. Since the integration, the drivers still drive container trucks but rarely drive bobtails.

unload cargo outbound through the SFO Gateway in the transfer yard. According to the testimony of SFO Gateway Manager Cozzoli, drivers from the Bay Area service centers load outbound cargo onto a conveyor belt in the transfer yard which transports the cargo up to the Gateway employees. Gateway employees, in turn, transfer the cargo from the C type containers to A type containers for loading onto flights bound out of SFO. For inbound cargo, the SFO Gateway employees unload the incoming cargo which is in A type containers, transfer it to C type containers, and place the C type containers onto the conveyor belt, for transport to the dock in the transfer yard where the service center drivers retrieve the containers and load them onto their trucks. A service center supervisor from the Oyster Point service center supervises the drivers while they are working within the transfer yard.

Transfer and Substitution of Personnel Between the SFO Gateway Operation and Other Employer Facilities. As indicated above, prior to the integration of the Bay Area Airborne and DHL service centers in April 2004, no Airborne employee had ever worked at the SFO Gateway. However, as described above, prior to April 2004, certain DHL drivers delivered cargo to and retrieved cargo from the ramp at the SFO Gateway operation. As described above, since about the time of the merger, DHL has not permitted service center drivers to deliver and pick up cargo within the ramp area at the SFO Gateway. Rather, the drivers now deliver and pick their cargo at a transfer yard which is separated from the Gateway operation by a fence. Cargo is transferred from the transfer yard to the Gateway operation via a conveyor belt. As discussed above, service

center drivers are not permitted to enter or handle cargo in the ramp area at the SFO Gateway.

The record reflects that since the merger of operations, no service center employee or supervisor has transferred to or performed work in the SFO Gateway operation, and no supervisor or employee from the SFO Gateway has transferred to or performed work in the service centers.²⁸ Nor have any supervisors or employees working at the SFO Gateway substituted for employees working at the service centers or the ramp operations at Oakland or San Jose Airports or vice versa.

Contact Between Employees At Different Employer Facilities. Not all service center drivers make deliveries to the transfer yard adjacent to the SFO Gateway and those who do have no face to face contact with and little direct interaction with the SFO Gateway employees. Thus, as described above, the service center drivers do not enter the ramp area where the SFO Gateway employees work. The only time that communications occur between service center employees and gateway employees is when an issue arises pertaining to cargo being picked up from or delivered to the SFO Gateway. On such occasions, a clerical employee at the SFO Gateway communicates with a clerical employee at the applicable service center by telephone or e-mail regarding how to handle the matter and/or a service center clerical employee communicates with a SFO Gateway clerical employee in the same manner. The record contains no evidence regarding how often this occurs.

²⁸ Gateway Manager Cozzoli testified that prior to the integration, SFO Gateway employees were given the opportunity to transfer to a DHL service center and vice versa.

Equipment. The record reflects that no equipment is shared or exchanged among the SFO Gateway operation, the service centers and the ramp operations at the Oakland and San Jose International Airports.

Training. The record reflects that the service center employees receive hazardous materials training, blood borne pathogen training and EEO and OSHA required training. SFO Gateway employees do not receive such training. However, they have a designated trainer who provides them with mandatory training in airport operations on a quarterly basis. SFO Gateway load planning agents also receive special weight and balance training and certification in training that is not given to service center employees.

Facilities. There are no facilities that are shared among the employees at the San Francisco Gateway operation and the Employer's other Bay Area operations at the service centers and ramps, such as bathrooms, parking lots, break rooms, etc.

Payroll Systems and Pay and Benefits. Employees at the service centers and Oakland and San Jose Airport facilities are on a payroll system different from that used for SFO Gateway employees. Thus, service center employees are paid and receive benefits under the terms of the NMFA and relevant Teamster agreements while employees at the SFO Gateway are paid under a different payroll system and receive different benefits.

Promotions & Seniority. The record reflects that there is no common promotional/advancement track or common seniority lists among the employees at the SFO Gateway employees, employees working at the Bay Area service centers and those working at the ramp operations at the Oakland and San Jose Airports.

Hours of Operation. The SFO Gateway operates 24 hours a day, 7 days a week, 365 days a year, and employees working in this operation have many and varied work schedules. The service centers typically operate six days a week, and are closed on Sundays and holidays. Service center hours vary, but generally run from 5 a.m. to 9 p.m. Oakland Airport ramp hours vary, but typically operate six days a week from 5 a.m. to 9 p.m., with only limited work on Saturdays. Employees at the Oakland ramp operation begin work at 6 a.m., 7 a.m., 8 a.m. and 4 p.m. The San Jose ramp operation runs a couple of hours in the morning and in the evening. San Jose ramp employees begin work at 6 a.m. The work schedules for drivers and clerical employees at the service centers vary with the applicable Teamsters agreements limiting drivers to three morning starts, one of which must be 8 a.m. Drivers working on the afternoon shift start at 12 p.m. or 1 p.m. Clerical employees have more flexible schedules, with start times typically being at 6 a.m., 11 a.m. or 12 p.m.

Other DHL Operations. As noted above, DHL has gateway operations at five airports in the United States, including the SFO Gateway facility. Although the record contains stipulated election agreements for elections to be conducted in units comprised of employees working at DHL's gateway facilities at airports located in Los Angeles, New York and Miami, none of these cities or facilities are named or discussed in the COA.

Analysis. As noted above, by the instant petition, the Employer seeks to have the units of divers and clerical employees employed at its twelve Bay Area service centers and at the Oakland and San Jose International Airport clarified to exclude the employees

at its SFO Gateway operation. In so doing, the Employer asserts that by the grievances described above, the Unions are trying to force it to recognize them as the collective-bargaining representatives of and apply their collective-bargaining agreements to the Gateway employees without affording them the opportunity to vote as to whether they desire such representation, notwithstanding that the Gateway employees do not constitute a lawful accretion to such units.²⁹

On the other hand, the Unions contend that the instant petition should be dismissed or deferred to the grievance-arbitration procedure. In support of this contention, the Unions argue that the Employer sought and used the Teamsters Change of Operations Committee and entered into the COA, and should be held to its agreement. Specifically, the Unions argue that the Employer should be required to abide by Section 10 of the COA which provides a mechanism for resolving disputes arising under the that agreement and not be permitted to circumvent the COA by using the Board's processes. In the alternative, the Unions argue that this matter should be deferred until the final resolution of the grievances under applicable NMFA procedures as required under the COA. The Unions further assert that the disposition of this case is controlled by the Board's decision in *Verizon Information Systems*, 335 NLRB 558 (2001), and *Al J. Schneider & Associates*, 277 NLRB 1305 (1977).

²⁹ In this regard, the Employer asserts in its brief that on July 14, 2004, the Change of Operations Committee heard the Unions' grievances and reached a deadlock. The Employer also asserts that under Article 8, Section 6 of the NMFA, the Unions have the right to pursue their grievances through the National Grievance Committee and that if it deadlocks, the Unions will be permitted to strike, creating the possibility that the Unions will use strike activity to force their recognition demands on DHL regarding the SFO Gateway operation.

After careful consideration, and for the reasons discussed below, I have concluded that the units of employees of DHL at the facilities covered by the COA and the applicable Teamsters' agreements in the Bay Area should be clarified to exclude all employees working in the Employer's SFO Gateway operation.

Under Section 102.60(b) of the Board's Rules and Regulations, Series 8, a party may file a petition for clarification of a bargaining unit where there is a certified or currently recognized bargaining representative and no question concerning representation exists. As the Board explained in *Union Electric Co.*, 217 NLRB 666, 667 (1972):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, are within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category--excluded or included--that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a Petitioner and employer or an established practice of such parties concerning the unit placement of various individuals, even if an agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

In the instant case, the Employer has at all times since the merger of Airborne and DHL, treated its operations at the SFO Gateway as not being subject to or covered under the COA. While the Unions have filed grievances asserting that the SFO Gateway facility is covered under the COA and that the Unions' collective-bargaining agreements must be applied to it, to date, no resolution has been reached between the parties concerning this dispute. There is no provision in the COA that discusses the Employer's SFO Gateway operation nor does that document contain any provision that includes that

facility within the coverage of that agreement. As indicated above, Section 10 states as follows:

The Company will make its best efforts to obtain all *bargaining unit work performed by DHL employees at a DHL facility which is merged into an Airborne facility* [emphasis supplied] and transfer such work to an Airborne location, including the staging of aircraft and the loading and unloading of aircraft by DHL employees. All pick-up and delivery work performed by DHL employees or independent contractors of the type currently performed by Airborne bargaining unit employees within the preexisting Airborne footprint shall be performed by bargaining unit employees when the operations are merged.

The Unions rely on this section of the COA in pressing their claim to the SFO Gateway employees. However, this section refers only to DHL facilities which were closed and whose operations were to be “merged” into an Airborne facility and the ability of these employees to follow their work. Further, the COA refers the facilities to be merged not by street address but by city, and this does little to resolve the issue of the parties’ intent in this matter. In addition, as noted above, while there is a reference in this section of the COA to certain Airborne employees affected who work at “SFF/SFO,” the meaning of this reference is not clear from the record. In sum, the COA does not refer to, discuss, or include the Employer’s SFO Gateway operation within the coverage of that agreement.

Thus, the issue presented appears to fall within that category of cases described by the Board in *Union Electric, supra*, as appropriate for resolution through a unit clarification proceeding because it involves “. . . the unit placement of individuals who . . . come within a newly established classification of disputed unit placement.”

If the issue presented was purely one of contract interpretation, I could perhaps consider deferral to the parties' agreed upon dispute resolution mechanism, as the Unions request. However, the issue presented is squarely one involving the representational rights of the employees at the SFO Gateway operation because any determination made through the parties' dispute resolution mechanism under the COA would decide whether the Employer must recognize the Unions as the bargaining representatives of the SFO Gateway employees and apply the Unions' collective-bargaining agreements to them.³⁰ Indeed, this is precisely the relief Locals 85 and 856 seek through their grievances. Plainly, such a determination could effectively extinguish the representational rights of these employees. However, the Board has long held that the "... determination of questions of representation, accretion, and appropriate unit do not depend on contract interpretations but involve the application of statutory policy standards, and criteria. These are matters for decision of the Board rather than an arbitrator's." *Marion Power Shovel Company, Inc.*, 230 NLRB 576 (1977); *Shaw's Supermarkets*, 343 NLRB No. 105 slip op. (December 8, 2004); *Ziegler, Inc.* 333 NLRB No. 114 slip op. (April 12, 2001); *Williams Transportation Company*, 233 NLRB 837 (1977). Accordingly, I decline to defer this matter to the dispute resolution mechanism prescribed in the COA.

In this regard, I find the Unions' reliance on *Verizon, supra*, to be misplaced. The Unions' argue, in essence, that as in *Verizon*, the Employer made its agreement, the Unions relied on that agreement; and the Employer should be required to live by the

³⁰ Indeed, as noted above, DHL is concerned that the Teamsters may strike if there is a deadlock in the grievance committee over the issue of the Teamsters' jurisdiction over the Gateway employees.

terms of that agreement, including Section 10. In *Verizon*, an employer and a union entered into a neutrality and card check agreement. Among other things, the agreement in that case provided (1) that the employer, on request, would provide the union with certain employee information and access to the employer's premises; (2) that the employer and the union would attempt to agree on appropriate bargaining units and submit the issue to arbitration if they were unable to agree; and (3) that the employer would recognize the union as the exclusive bargaining representative for any agreed-upon or bargained-for unit if the union showed proof of majority status through authorization cards. Pursuant to this agreement, the union requested that the employer furnish it with certain employee information, which the employer provided. The parties were unable to agree on the scope of the units and, at the union's urging, scheduled an arbitration hearing. However, before the hearing, the union decided to seek an election and filed a representation petition. The Board majority dismissed the petition on the basis that the union, having invoked the parties' neutrality and card check agreement and received benefits from it, was estopped from seeking an election. *Id.* at 560-561. In so doing, the Board reasoned that the union, “. . . having invoked the agreement, the fundamental policies of the Act can best be effectuated by holding the Petitioner to its bargain,” observing that “[t]o do otherwise would permit the [union] to take advantage of benefits accruing from its valid contract while avoiding the commitment by petitioning the Board for an election.” *Id.*

In the instant case, there is no question that the Employer solicited the International and affiliated Teamsters entities to approve its Change of Operations

Proposal. The letter of its vice president indicates that the Employer sought an agreement with the Unions in order to avoid costly disruptions and predatory business practices by its competitors during the period of time when it was merging its operations with those of Airborne. However, the COA also clearly benefited the Unions, which obtained recognition from the Employer and the Employer's assent to apply the Union's collective-bargaining agreements to certain of its facilities without resort to costly organizational efforts or litigation. Both parties mutually benefited from the terms of the COA. I see no detrimental reliance in this case on the part of the Unions, as existed in *Verizon*, where the employer had given information to the union in order to permit it to organize the employer's employees. In the instant case, from the time the COA issued, the parties have simply disagreed over whether it applies to the Employer's SFO Gateway operation. In these circumstances, I do not find the Board's decision in *Verizon* to be controlling in the circumstances of this case and I decline to defer this matter to the dispute resolution mechanism set forth in the COA.

I also find the other case relied on by the Unions, *Al J. Schneider & Associates*, 277 NLRB 1305 (1977), does not require a different result. That case simply stands for the proposition that the Board will not entertain a unit clarification petition in a situation where a pending unfair labor practice proceeding raises the same issues as presented by the unit clarification petition. See *Al J. Schneider & Associates*, 277 NLRB 1305 (1977); see also *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921 (1997).

Finally, I reject the Unions' contention that I should defer this matter pending final resolution of the grievances filed by Locals 85 and 856 through the agreed-upon

grievance and arbitration procedure. Such a result would not be conducive to stable collective bargaining. Moreover, my decision to clarify the unit does not preclude the Unions from later seeking representation of those employees through the filing of a petition for an election. See *Ziegler, Inc., supra*. The Board, in *Tweddle Litho, Inc.*, 337 NLRB 686 (2002) responded to a similar argument as follows:

Our colleague suggests a two-step process, i.e., arbitration and then, if representation issues remain, Board intervention. We see no need to adopt this two-step process and thereby delay the handling of this case which presents, at its core, representation issues.

Accordingly, having concluded that it is appropriate to make a determination in this case, I must decide whether the units at issue herein should be clarified to exclude the SFO Gateway employees.

In determining whether new employees share a community of interest with employees in an existing bargaining unit sufficient to warrant an accretion, the Board weighs various factors including: integration of operations, centralization of management and administrative control, geographical proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, and interchange of employees. *Progressive Service Die Co.*, 323 NLRB 183 (1997).

Employee interchange and common day-to-day supervision are the two most important factors. *Towne Ford Sales*, 270 NLRB 311 (1984); *New England Telephone & Telegraph Co.*, 280 NLRB 162 (1986). The Board has followed a restrictive policy in finding accretions because they foreclose the basic right of employees to select their bargaining representative. See *Towne Ford Sales, supra*. Accretion is not appropriate to a group that would constitute a separate bargaining unit. See *Beverly Manor-San Francisco*, 322

NLRB 968, 972 (1997); *Passavant Health Center*, 313 NLRB 1216 (1994). In order to find an accretion, the Board must find that the group to be accreted has “little or no separate group identity,” and has “an overwhelming community of interest with the unit.” *Safeway Stores, Inc.*, 256 NLRB 918 (1981); see also, *Safety Carrier*, 306 NLRB 960, 969 (1992); *Progressive Service Die Co.*, *supra*.

The record in the instant case discloses that the employees in the SFO Gateway operation work at a location separate and apart from the employees in the service centers and airport operations represented by the Unions. The closest service center represented by the Unions is Oyster Point, which is two miles away from the SFO Gateway facility. Further, as noted above, the Employer’s San Jose Airport ramp operation is located about 33 miles from SFO and the Oakland Airport operation is located about 36 miles from SFO. Secondly, the employees at the SFO Gateway operation have separate day-to-day supervision from the employees represented by the Unions at the service centers and the Oakland and San Jose Airports. Third, there has been no interchange among employees at the SFO Gateway operation and employees represented by the Unions at the service centers and the Oakland and San Jose Airports. Further, there is no evidence that the operations of the SFO Gateway facility are highly integrated with those of the other facilities. A significant portion of the work performed at the SFO Gateway involves specialized Customs and import/export work, which is not the type of work performed by employees at the service centers or at the Oakland and San Jose Airports. The only contact or communication between employees at a service center and employees at the SFO Gateway operation occurs when an issue arises concerning cargo to be delivered to

or picked up from SFO Gateway by service center employees. On such occasions, a clerical employee at the SFO Gateway communicates with a clerical employee at the applicable service center by telephone or e-mail regarding how to handle the matter and/or a service center clerical employee communicates with a SFO Gateway clerical employee in the same manner. Much of the work performed by employees at the service centers has nothing to do with the Employer's SFO Gateway operation and much of the work of the employees at the SFO Gateway operation has nothing to do with the work performed by employees at the service centers. In addition to the foregoing, the working conditions of employees at the SFO Gateway operation are different from those of employees at the service centers and the Oakland and San Jose Airports. Further, the terms and conditions of employment of the employees at the SFO Gateway operation are not covered by the Unions' collective bargaining agreements, which have been applied to employees at the service centers and the ramp operations at the Oakland and San Jose Airports. Finally, there is no history of collective bargaining for the SFO Gateway employees as there is for employees at the other Bay Area facilities.

In sum, the community of interest factors which the Board weighs in accretion cases do not support a finding that the SFO Gateway employees are an accretion to the existing bargaining units. As the SFO Gateway employees work at a location separate and apart from the employees in the service centers and airport operations represented by the Unions, receive wages and benefits different from the Union represented employees, have supervision that is separate and distinct from the Union represented employees, perform work that is different from that performed by the Union represented employees,

and have no interchange with the Union represented employees, clearly, the SFO Gateway employees could constitute a separate appropriate unit given their separate location and the other factors described above. Moreover, there is no history of collective bargaining at the SFO Gateway facility and there is no evidence that the SFO Gateway employees desire to be represented by the Unions. Thus, the record evidence plainly establishes that the SFO Gateway employees possess an identity separate and distinct from the employees at the Employer's other facilities in the Bay Area and that they do not share a community of interest with those employees. In view of the foregoing, I find that accretion is not appropriate in this case.

Accordingly, I find that the employees working in the SFO Gateway operation are excluded from the units of drivers and clerical employees employed at the Employer's Bay Area service centers and the Oakland and San Jose Airports who perform work covered under the Unions' collective bargaining agreements.

ORDER

I HEREBY ORDER that the unit of employees of Airborne Express, Inc., d/b/a DHL Express performing work covered under the Local Pickup and Delivery Agreement Supplement to the Teamsters National Master Freight Trucking Agreement, effective for the period from April 1, 2003 through March 31, 2008, be clarified to exclude all employees of DHL Express (USA), Inc. d/b/a DHL Express performing work at DHL's Gateway operation located at the San Francisco International Airport, California. **I FURTHER ORDER** that the unit of employees of Airborne Express, Inc., d/b/a DHL Express performing work covered under the Addendum to the Teamsters Western States

Area Office Employees Supplemental Agreement and National Master Freight Agreement Covering Freight Checkers, Clerical Employees and Helpers Union Local 856, IBT, effective for the period from April 1, 2003 through March 31, 2008, be clarified to exclude all employees of DHL Express (USA), Inc. d/b/a DHL Express performing work at DHL's Gateway operation located at the San Francisco International Airport, California.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by February 18, 2005.

Dated at San Francisco, California, this 4th day of February, 2005.

/s/ Robert H. Miller

Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
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San Francisco, California 94103-1735